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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

IN RE: YELLOWSTONE CLUB WORLD LLC, Debtor.	No. 09-60061-7-RBK
ROSS P. RICHARDSON, Ch. 7 Trustee v. TIMOTHY L. BLIXSETH, Claimant and Counter-Defendant, individually and as Managing agent of entity defendants YELLOWSTONE HOLDINGS MEXICO S de RL de CV; YELLOWSTONE CLUB CABO SAN LUCAS S de RL de CV; YELLOWSTONE CLUB WORLD TAMARINDO S de RL de CV; CODY RANCH LLC; EMERALD CAY LTD; DIETER HUCKESTEIN, an Individual, Claimant and Counter-Defendant, HOTEL PROCUREMENT SERVICES, LLC, a limited liability company, and DOES 3 -10.	Adversary No. 09-00086 **MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND MEMORANDUM IN SUPPORT**
DIETER HUCKESTEIN Third Party Plaintiff and Cross Claimant v. TIMOTHY BLIXSETH and BLIXSETH GROUP OF WASHINGTON, LLC Cross Defendant and Third Party Defendant	

COME NOW, Defendants Timothy Blixseth and Blixseth Group of Washington, LLC ("Blixseth" and "BGW"), by and through their attorneys of record, Philip H. Stillman and Daniel D. Manson, and move this Court to dismiss the Amended Third Party Complaint by Dieter Huckestein ("Huckestein") for lack of subject matter jurisdiction. By Order dated March 31, 2010, this Court granted the YCW Trustee's motion to dismiss the estate's claims against Huckestein (Docket No. 87). As the YCW estate and Huckestein have mutually released one another from any and all claims, the bankruptcy court clearly lacks subject matter jurisdiction over the issues raised in Huckestein's third party complaint against Blixseth and BGW. This motion is supported by the following Memorandum.

MEMORANDUM

I. PROCEEDURAL HISTORY

This matter began as an adversary proceeding filed by the Yellowstone Club World, LLC ("YCW") bankruptcy Trustee against Blixseth and various other entity defendants. By Amended Complaint, the YCW Trustee added claims against Huckesetein and Hotel Procurement Services, LLC ("HPS"). Huckestein and HPS filed a Motion to Dismiss the Trustee's Complaint pursuant to Fed. R. Civ. P. 12(B)(6) and a supporting memorandum (Docket No. 47). Huckestein and HPS never filed an answer to the Trustee's Complaint, and the Trustee's claims against Huckestein and HPS did not progress any further than Huckestein's Motion to Dismiss prior to settlement and dismissal. Notwithstanding that Huckestein did not file an answer to the Trustee's Complaint, Huckestein filed a Crossclaim and Third-Party Complaint against

Blixseth and BGW (Docket No. 49), alleging contractual remedies against Blixseth and BGW related to the termination of Huckestein's employment contract with YCW. Huckestein's claims are based upon certain obligations of YCW that Blixseth agreed to assume as part of his Marital Settlement Agreement with Edra Blixseth.

Blixseth and BGW moved to dismiss Huckestein's Third-Party complaint on March 26, 2010 (Docket No. 84)[1]. Huckestein filed an Amended Third-Party Complaint on April 21, 2010 (Docket No. 101).

On March 31, 2010, the Bankruptcy court granted the Trustee/Plaintiff's motion for Order dismissing Adversary Proceeding No. 09-00086 as against Huckestein and HPS (Docket No. 87). In addition, the Trustee and Blixseth (along with the entity Defendants) have agreed to a settlement, with the motion for approval of the settlement currently pending before this Court (Case No. 09-60061, Docket No. 168).

None of the parties in named in Huckestein's Complaint are debtors in this bankruptcy estate. The YCW bankruptcy estate has no claims against Huckestein in this adversary proceeding, or otherwise. All claims by the YCW estate against Huckestein are fully released. Likewise, all claims by Huckestein against the YCW estate are fully released. Huckestein's claims against Blixseth and BGW are contractual in nature and have nothing to do with the

[1] Blixseth's Motion to Dismiss was filed on March 26, 2010. Although Blixseth understood that the Trustee and Huckestein had reached a settlement, the Trustee's motion to approve the settlement was not yet filed. The existence of a pending claim between the Trustee and Huckestein was the only possible argument that Huckestein could make to invoke the Court's "related to" subject matter jurisdiction for his claims against Blixseth and BGW. Thus, although Blixseth and BGW disputed whether the Court had subject matter jurisdiction at the time the first Motion to Dismiss was filed, the issue was not yet ripe for filing a motion to dismiss on that issue because the Trustee's claims had not yet been dismissed.

administration of the YCW estate or any claims made against the YCW estate. Under any applicable test, this court lacks subject matter jurisdiction over Huckestein's claims against Blixseth and BGW. As the court lacks subject matter jurisdiction, Huckestein's claims must be dismissed by this Court without prejudice and allowed to proceed in a court which has proper subject matter jurisdiction.

II. ARGUMENT

Because federal courts are courts of limited jurisdiction, it is "presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Vacek v. United States Postal Serv.*, 447 F.3d 1248, 1250 (9th Cir. 2006). A bankruptcy court has jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). In this case, Huckestein's claim does not fall within any of the tests for subject matter jurisdiction, and this case must be dismissed.

A. This Matter Does Not "Arise Under" Title 11, U.S.C.

Proceedings "arising in" bankruptcy cases are commonly called "core" proceedings, and encompass proceedings that would not exist outside of the bankruptcy context. 28 U.S.C. § 157(b)(2); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193-94 (9th Cir. 2005). The Ninth Circuit has stated that "[a]ctions that do not depend on bankruptcy laws for their existence and that could proceed in another court are considered 'non-core'." *Security Farms v. International Brotherhood of Teamsters*, 124 F.3d 999, 1008 (9th Cir. 1997). The Ninth Circuit has also held that core proceedings are matters concerning administration of the estate and rights created by Title 11. *In re International Nutronics, Inc.*, 28 F.3d 965, 969 (9th Cir. 1994), cert. denied *Robertson v. Isomedix, Inc.*, 513 U.S. 1016, 115 S.Ct 577, 130 L.Ed.2d 493 (1994). This Court has held that "If the proceeding does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy it is not a core proceeding." *In re Reinertson*, 224 B.R. 137, 147-48 (Bankr. D. Mont. 1998) (citing *In re ACIHDT Supply Co.*, 205 B.R. 231, 237 (9th Cir. BAP 1997)).

Here, Huckestein's claims are strictly contractual in nature. As evidenced by Huckestein's Amended Third-Party Complaint against Blixseth and BGW, Huckestein's claims are based on his employment contract with YCW, and the subsequent Marital Settlement Agreement, under which it is alleged that Blixseth "assumed responsibilities for all YCW employees." (Huckestein's Amended Third-Party Complaint, Docket No. 101, ¶ 45-46). Huckestein's claims are purely contractual. This litigation could legitimately be heard in a state court or a federal district court and is not a core proceeding.

B. The Complaint Does Not Fall Within the Court's "Related To" Jurisdiction.

In addition to subject matter jurisdiction over "core" proceedings, the court has jurisdiction over proceedings that are "related to" a bankruptcy case. The Ninth Circuit has adopted the "*Pacor* test" to determine the scope of "related to" jurisdiction. *Vacation Village, Inc. v. Clark County*, 497 F.3d 902, 911 (9th Cir. 2007). Under the *Pacor* formulation, the test is whether "the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Id.* (citing *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir. 1984)). An action is "related to" a bankruptcy case "if the outcome could alter the **debtor's** rights, liabilities, options, or freedom of action, either positively or negatively, and which in any way **impacts upon the handling and administration of the bankruptcy estate**." *Munding v. LeMaster & Daniels, P.L.L.C. (In re Spokane Raceway Park, Inc.)*, 392 B.R. 451, 458 (Bankr. E. D. Wash. 2008) (emph. added).

In this case, Huckestein has been released by the YCW bankruptcy estate for any and all claims the estate may have against him. Furthermore, the YCW estate has been released from any and all claims Huckestein may have against it. (Docket No. 86-1, Exhibit A – *Settlement Agreement and Release*). Regardless of whether Huckestein is successful or unsuccessful in his claims against Blixseth and BGW, the result does not impact the administration of the YCW bankruptcy estate, nor any rights or liabilities of the YCW estate. The YCW estate's rights and/or liabilities against Blixseth are not implicated whatsoever by Huckestein's claims against Blixseth and BGW. Given that the bankruptcy estate has no claim in this adversary proceeding against Huckestein, there is no way that the contract dispute alleged by Huckestein against Blixseth and BGW could have any conceivable impact upon the administration of the YCW bankruptcy estate. Thus, under the *Pacor* test, the claims by Huckestein against Blixseth and BGW clearly do not invoke the "related to" subject matter jurisdiction of this Court.

CONCLUSION

The claims by Huckestein against Blixseth and BGW are not core proceedings and do not invoke the "related to" subject matter jurisdiction of this Court. As the Court clearly lacks subject matter jurisdiction, Huckestein's claims against Blixseth and BGW must be dismissed immediately by this Court to allow the action to proceed in a court with proper subject matter jurisdiction.

Respectfully submitted this 27th day of April, 2010.

STILLMAN & ASSOCIATES

By: ***/s/ Philip H. Stillman***

CORETTE POHLMAN & KEBE

By: ***/s/ Daniel D. Manson***

Attorneys for Timothy Blixseth and
Blixseth Group of Washington, LLC

NOTICE

If you object to the motion, you must file a written responsive pleading and request a hearing within fourteen (14) days of the date of the motion. The responding party shall schedule the hearing on the motion at least 21 days after the date of the response and request for hearing and shall include in the caption of the responsive pleading the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING
Date: ___________________
Time: ___________________
Location: ________________

If no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.

Dated this 27th day of April, 2010.

By: ***/s/ Daniel D. Manson***
Daniel D. Manson

Attorneys for Timothy Blixseth
and Blixseth Group of
Washington, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury that on April 27, 2010, a copy of the foregoing document was served (i) by electronic means pursuant to LBR 9013-1(c) on the parties noted in the Court's ECF transmission facilities and/or (ii) by mail on the following parties: None.

Dated: April 27, 2010.

/s/ *Daniel D. Manson*
By:___________________________
Daniel D. Manson

Attorneys for Timothy L. Blixseth and Blixseth Group of Washington, LLC